

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between


Grievant

And

Department of State

Record of Proceedings
FSGB Case No. 2016-025

August 16, 2016

ORDER: Motion on Jurisdiction

EXCISED

For the Foreign Service Grievance Board:

Presiding Member:

John M. Vittone

Board Members:

Jeanne L. Schulz

Nancy M. Serpa

Special Assistant

Katherine Kaetzer-Hodson

Representative for the Grievant:

Juliette Niehuss
Kator, Parks, Weiser, & Harris, P.L.L.C.

Representative for the Department:

Melinda Chandler
Director
Grievance Staff

Employee Exclusive Representative:

American Foreign Service Association

ORDER: MOTION ON JURISDICTION

This Order addresses the Department of State's request for a preliminary determination on jurisdiction. The grievant, [REDACTED], requests this Board to enforce the terms of his March 4, 2015 Settlement Agreement with the Department of State. He alleges that the Department has failed to meet its obligations under the agreement by failing to follow through with its promises to: 1) correct his SF-50s to reflect a reassignment to the Bureau of Political-Military Affairs on June 15, 2011; 2) reconstitute 2013 selection boards to consider his promotion to FS-02; and 3) make corrections to delete prejudicial information from his Employee Evaluation Report (EER) and other performance files.

The Department

On April 6, 2015, grievant informed the Board that he was withdrawing his grievance appeal with prejudice due to successful mediation and a settlement agreement. The Department requests that the Board make a preliminary determination of jurisdiction, as the Board dismissed his appeal with prejudice on April 10, 2015. The Department maintains that the petition to enforce the settlement agreement should be dismissed in accord with the Board's Policies and Procedures, in that grievant has failed to exhaust his administrative remedies by filing an agency-level grievance about these matters.

The Grievant

[REDACTED] alleges that the Department's "numerous errors and delays have caused a breach of the agreement." The agency has failed to make agreed-upon corrections to his SF-50, to hold accurate and timely reconstituted 2013 Selection Boards to consider his promotion to FS-02; and to correct his EERs and other files to remove prejudicial and incorrect entries.

In his response¹ to the agency's motion for a ruling on jurisdiction, grievant relies upon language in his settlement agreement with the Agency that was not made part of the Record of Proceedings and to which the Board thus does not have access. In his response, grievant maintains that the terms of said agreement permit the Board to retain its jurisdiction over the matters agreed upon therein.

Discussion

The Board has authority to make a preliminary determination of jurisdiction at the request of the agency in grievance appeals in which the agency questions the Board's jurisdiction.. 22 CFR 904.2. Therefore, we make such a determination in the instant appeal.

According to the parties, page 6, paragraph D, of the Settlement Agreement provides:

His grievance and any and all other claims he may have against the Department . . . shall stand as settled in full and no matters, raised or not raised, shall form the basis of any other grievance or legal complaint or any adjudicative proceeding before the Department, the FSGB or any court of law or any other forum; and that the Department has no further liability with regard to his grievance . . . provided, however, that nothing herein shall preclude Mr. Smith from asserting a grievance to allege that the Department has not complied with the terms of this Settlement Agreement.

FSGB Case No. 2010-028 was dismissed with prejudice, at the request of both parties.

We agree with the Department that he must first file a grievance with the agency. If the Department denies his grievance he may file an appeal within 60 days of receipt of the agency decision, and if the Department fails to respond to the grievance within 90 days, [REDACTED] may appeal to the Board no later than 150 days after the date of the original grievance filing.² This process is consistent with language of the Settlement Agreement quoted above.

Irrespective of the contents of the Settlement Agreement between the parties, the FSGB's dismissal of this case with prejudice ended the Board's jurisdiction over the grievance. We make no evaluation of grievant's claims with regard to the Department's alleged noncompliance with

¹ Grievant's Response to Agency Motion on Ruling on Jurisdiction dated May 17, 2016.

² 22 CFR 903.1

the Settlement Agreement. The record before us makes it clear that [REDACTED] must pursue administrative remedies to his complaints before appealing to this Board.

FSGB Case No. 2016-025 is dismissed for lack of Board jurisdiction.

For the Foreign Service Grievance Board:

[REDACTED]

John M. Vittone
Presiding Member

[REDACTED]

Jeanne L. Schulz
Member

[REDACTED]

Nancy M. Serpa
Member